

RBS and RUS, USDA

§ 4274.308

B&I—Business and Industry
IRP—Intermediary Relending Program
OGC—Office of the General Counsel
OIG—Office of Inspector General
OMB—Office of Management and Budget
et
RBS—Rural Business-Cooperative Service, or any successor agency
RDLF—Rural Development Loan Fund
USDA—United States Department of Agriculture

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are:

(1) Private nonprofit corporations.

(2) *Public agencies*—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) *Indian groups*—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) *Cooperatives*—Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (*i.e.*, usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements—Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government by the ultimate recipient or any of its principals shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

(a) *Intermediaries.* Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipients.* Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and